IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

FRIDAY, THE 19TH JANUARY 2007 / 29TH PAUSHA 1928

WP(C).No. 921 of 2007(I)

PETITIONER:

BHARATH SANCHAR NIGAM LTD.,
O/O. THE E.E.(C), TELECOM CIVIL DIVISION,
KOTTAYAM, REPRESENTED BY ITS EXECUTIVE ENGINEER,
K.G.DIVAKARAN NAIR.

BY ADV. SMT.S.K.DEVI

RESPONDENTS:

1. COMMERCIAL TAX OFFICER (WC),
   O/O. THE DEPUTY COMMISSIONER,
   DEPARTMENT OF COMMERCIAL TAXES, KOTTAYAM.

2. DEPUTY COMMISSIONER (APPEALS),
   DEPARTMENT OF COMMERCIAL TAXES, KOTTAYAM.

3. THE DEPUTY TAHASILDAR (RR),
   KOTTAYAM.

BY BY GOVT.PLEADER SRI SOJAN JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN,J.

W.P.(C).NO.921 OF 2007

Dated this the 19th day of January, 2007

JUDGMENT

The challenge made in this writ petition is against an interim order passed by the Deputy Commissioner (Appeals) in a stay application filed by the petitioner in the appeals pending consideration before him. The assessment relates to the years 1998-99 to 2000-01. As per Ext.P10 order, the petitioner was directed to pay 50% of the balance tax due within three weeks from the date of receipt of that order and to furnish security for the balance amount as a condition for granting stay of recovery of the balance tax due. According to the petitioner, as per Exts.P1 to P3 assessment orders under appeal, the Assessing Officer has included the amounts

already assessed in the hands of the telecommunication department. As such the inclusion of the very same amount is in no way justified, since the tax cannot be demanded for the same amount from the petitioner also.

2. The learned Government Pleader, after ascertaining the correctness of the above plea, fairly submitted that this is correct. However, according to him, this mistake happens only because the petitioner did not produce the relevant assessment orders relating to the telecommunication department on or before the assessment orders were passed. However, according to the learned counsel for the petitioner, this aspect was not known to them at that time.

3. Having considered the rival submissions and taking into consideration the materials on

record, I find that the conditions imposed on the petitioner to pay 50% of the amount is excessive and arbitrary and the order is passed in a mechanical way.

4. In the circumstances, I direct that the petitioner shall pay 1/4th of the amount of balance tax due within one month and the appellate authority shall dispose of the appeals expeditiously and there will be an interim stay of collection of the remaining balance tax due. The order impugned stands modified, accordingly. In default, the petitioner will lose the benefit of this order.

Writ Petition is disposed of as above.

P.R.RAMAN,
Judge.

kcv.